IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

OP.No. 4462 of 1998(F)

PETITIONER:

K.A.IBRAHIM, S/O.ABDULLA HAJI,
RESIDING AT HABIB VILLA, I.T.F.ROAD,
KASARAGOD.

BY ADV. SRI.N.NANDAKUMARA MENON
SRI.MURALI PURUSHOTHAMAN

RESPONDENTS:
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1. THE UNION OF INDIA REPRESENTED BY THE ADDITIONAL SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEW DELHI.

2. STATE OF KERALA REPRESENTED BY THE COMMISSIONER AND SECRETARY (HOME), GOVERNMENT OF KERALA SECRETARIAT, TRIVANDRUM.

3. THE SUPERINTENDENT OF POLICE, KASARAGOD.

BY ADV. SRI.C.S.ABDUL SAMMAD
SPL.GOVERNMENT PLEADER SRI.C.T.RAVIKUMAR.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.No.4462 of 1998-F

Dated, this the 13th day of September, 2007

JUDGMENT

H.L.Dattu, C.J.

Petitioner claims that he is a permanent resident of Kasaragod and is now residing at Habib Villa, I.T.F.Road, Kasaragod.

(2) Petitioner has filed this original petition under Article 226 of the Constitution of India, inter alia, seeking the following reliefs:

> "i) To issue a writ of certiorari, or other appropriate writ, order or direction to quash Exhibit P2, P3, P8 and P10 orders.
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> ii) To issue a writ of mandamus or other appropriate writ, order or direction, directing the 2nd respondent to revoke the detention order issued against the petitioner under Section 3(1) of the Cofeposa.
>
> iii) To issue a writ of mandamus or other appropriate writ, order or direction restraining the respondents from arresting or detaining the petitioner in custody on the basis of the detention order issued under Section 3(1) of the Cofeposa.
>
> iv) To issue a writ of mandamus or other appropriate writ, order or direction, restraining the 3rd respondent and his subordinate officers from harassing the petitioner in any manner.
>
> v) To grant to the petitioner such other and further reliefs, that may be prayed for from time to time and this Hon'ble Court may deem fit and necessary to grant; and
>
> vi) To award to the petitioner his costs in these proceedings."

(3) Along with the original petition, petitioner has filed C.M.P.No.8040 of 1998. Prayer in the said petition is as under:

> "For the reasons stated in the original petition as verified by the affidavit accompanying thereto it is humbly prayed that this Honourable Court be pleased to issue an interim direction, directing the respondents not to arrest and detain the petitioner in custody on the basis of the detention

> order issued under Section 3(1) of the Cofeposa by the second respondent in the month of April, 1995 pending disposal of the above Original Petition."

(4) This Court while entertaining the writ petition, has issued the following directions by its order dated 6.3.1998:

> "Shri.Abdul Samad takes notice for R1. G.P. Takes notice for R2 and R3.
> There will be an interim direction for 10 days."

(5) The matter was again posted before this Court on 13.3.1998. On that day the interim direction was extended by another three months.

(6) Since the respondents had not filed their counter affidavit, this Court by its order dated 11.6.1998 was pleased to extend the interim order/direction issued earlier until further orders.

(7) Thereafter the original petition did not see the light of the day. Nor the respondents have taken care to get the interim order modified/vacated. That is how the original petition is pending before this Court from last ten years.

(8) Petitioner is before this Court in the original petition at the pre-execution stage of the order of detention. The primary ground urged in the original petition is that the order of detention is passed by the detaining authority in exercise of its powers under Section 3(1) of the COFEPOSA Act ('the Act' for short) in the month of April, 1995 and since that has not been executed till 1998, the respondents should be prevented from executing the said order.

(9) In our opinion, the petition filed by the petitioner is wholly premature. At the pre-execution stage of the detention order, the petitioner could not have rushed to this Court preventing the respondents from executing the order passed under Section 3(1) of the Act. The law on the point is well settled. As

observed by the Supreme Court in the case of the *Additional Secretary to the Government of India and others* v. *Smt.Alka Subhash Gadia and another* (J.T. 1991(1) S.C.549) even before the execution of the order of detention passed under Section 3(1) of the Act it can be questioned only on the limited ground. In the said decision the Supreme Court has stated as under:

> "The courts have the necessary power and they have used it in proper cases..... although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not based under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question."

(10) In the instant case, as we have already noticed, the prime ground urged by the petitioner in the original petition is that the order of detention was passed in the year 1995 and the same has not been executed till 1998 and therefore, the third respondent cannot execute the order of detention passed by the executing authority. This ground, in our opinion, can be urged only after execution of the order of detention passed under Section 3(1) of the Act by the detenu and not even before execution of the said order of detention. In that view of the matter, we pass the following:

Order

i) Original petition is rejected.

ii) However, liberty is reserved to the petitioner, if he so desires, to

question the order of detention that may be executed against him in appropriate proceedings.

iii) Registry is directed to send a copy of the orders passed by this Court to the first respondent and also to the third respondent forthwith.

iv) Consequently, C.M.P.No.8040 of 1998 is also dismissed.

Ordered accordingly.

(**H.L.DATTU**)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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